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**JUN 17 2004**

**DIRECTOR'S OFFICE  
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Allen D. Brufsky, P.A.  
8930 Bay Colony Drive  
Naples, FL 34108

In re application of  
Darin Prizzi  
Application No. 09/993,820  
Filed: November 16, 2001  
For: TOWEL HOLDER

DECISION ON PETITION  
TO WITHDRAW THE  
HOLDING OF ABANDONMENT

This is in reply to the Petition To Withdraw Holding of Abandonment under 37 CFR 1.181(a) filed April 26, 2004.

The petition is **DISMISSED**.

A review of the application reveals that a Notice of Non-Compliant Amendment was mailed August 26, 2003 in response to the amendment filed August 7, 2003. A Notice of Abandonment was mailed March 9, 2004 because of applicant's failure to reply to the Non-Compliant Notice.

Applicant states that the Non-Compliant Notice and the Notice of Abandonment were not received.

A review of the record file reveals that both Notices were returned to the Office as undeliverable mail. The envelope bearing the Non-Compliant Notice is marked "Forward time exp rtn to send". It is further noted that the postcard receipt associated with the amendment filed August 7, 2003 and the address provided in the petition do not match the correspondence address of record.

The MPEP 601.03 states,

"Where an attorney or agent of record (or applicant, if he or she is prosecuting the application *pro se*) changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP code)..."

"The required notification of change of correspondence address need take no particular form. However, it should be provided in a manner calling attention to the fact that a change of address is being made. Thus, the mere inclusion, in a paper being filed for another purpose, of an address which is different from the previously provided correspondence address, without mention of the fact that an address change is being

made would not ordinarily be recognized or deemed as instructions to change the correspondence address on the file record.”

Because applicant apparently failed to file a change of correspondence address, there was no apparent Patent and Trademark Office error in the mailing of the Office communication and the holding of abandonment will not be withdrawn.

Given that applicant failed to change the correspondence address before the mailing of the Non-Compliant Notice mailed August 26, 2003, it is not surprising that applicants failed to receive the above noted Notices. While MPEP 711.03(c) does give applicant the ability to petition to show that a communication from the Patent Office was not received, this is predicated on the fact that applicant was able to receive mail at the correspondence address. MPEP 711.03(c) also requires applicant to show that “due care was taken to adhere to the requirement for prompt notification in each concerned application for the change of address”. Since applicant was apparently not able to receive mail at the address of record, and the Notice mailed August 26, 2003 was correctly mailed to the address of record, the procedure outlined in 1156 OG 53 is not available to applicant.

Applicant may wish to consider filing a petition to revive under 37 CFR 1.137(a) (unavoidable delay) or 37 CFR 1.137(b) (unintentional delay) as discussed below.

#### I. Unavoidable Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(a) must be accompanied by: **(1)** the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; **(2)** the petition fee required by 37 CFR 1.17(l); and **(3)** an adequate showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable.

The showing requirement can be met by submission of statements of fact establishing that the delay in filing the reply was unavoidable. This includes a satisfactory showing that the cause of the delay resulting in failure to reply in a timely fashion to the Office action was unavoidable. Diligence during the time period between abandonment and filing of the petition to revive must also be shown.

As an alternative to filing a petition for unavoidable abandonment, a petition for revival of an application abandoned unintentionally under 37 CFR 1.137(b) might be appropriate.

## II. Unintentional Delay.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may be met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute; (2) the petition fee required by 37 CFR 1.17(m); and (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.

The petition fee required by law for filing a petition under unavoidable standard is \$110. The fee for a petition under the unintentional standard is \$1,330. If applicants have, or can qualify as a "small entity" and do so prior to or together with the payment of the fee, the fee will be one-half of the amount indicated.

If not previously filed, the reply to the outstanding Office action must accompany the petition to revive.

The required items should be promptly submitted under a cover letter entitled "Petition to Revive".

Further correspondence with respect to a petition to revive should be addressed as follows:

By mail:                      Mail Stop Petition  
                                    Commissioner for Patents  
                                    P.O. Box 1450  
                                    Alexandria, VA 22313-1450

By FAX:                      (703) 308-6916  
                                    Attn: Office of Petitions

By Hand:                     Crystal Plaza 4, Suite 3C23  
                                    2201 South Clark Place  
                                    Arlington, VA 22202

Telephone inquiries should be directed to the Office of Petitions Staff at (703) 305-9282.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181."

A copy of this decision is being mailed to the address appearing in the petition as a courtesy. Applicant is required to file a proper request for a change of address if he wishes to receive future correspondence at this address.



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KJD/mjz: 6/7/04

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